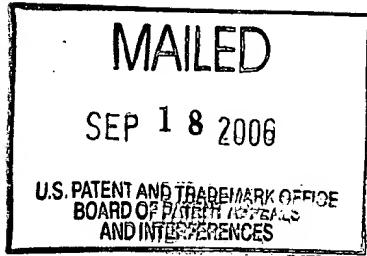


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte HANG ZHANG,
KSAI LIANG and DAHAI LI

Application 09/496,600

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on August 25, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

On August 29, 2005, an Order Returning Undocketed Appeal to Examiner was mailed which ordered that the application be returned to the examiner:

- 1) to hold the Appeal Brief filed January 31, 2005 defective;
- 2) for notification to appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- 3) for consideration of the supplemental Appeal Brief;
- 4) for a determination regarding the status of claims 41 through 44;
- 5) for notification to appellants to submit a new Appendix to the Appeal Brief which contains the corrected claims, or for the examiner to issue a revised Examiner's Answer which contains a correct copy of claims 1, 11, 17, 24 and 31;
- 6) for vacating the Examiner's Answer mailed May 5, 2005, and issuing a revised Examiner's Answer in compliance with the new rules which went into effect on September 13, 2004; and
- 7) for such further action as may be appropriate.

On December 20, 2005, a revised Examiner's Answer was mailed which appeared to be a duplicate of the Examiner's Answer mailed May 5, 2005 except that the grounds of rejection were corrected to include claims 41 through 44.

On January 9, 2006, appellants submitted a Reply Brief "to the Examiner's Answer mailed December 20, 2005" [page 1] and a Supplemental Appeal Brief "in response to the Order Returning Undocketed Appeal to Examiner mailed on August 29, 2005" [page 1]. While the Supplemental Appeal Brief now includes the Evidence and Related Proceedings Appendices as required by 37 CFR § 41.37(c), the Appendix still does not contain a correct copy of claims 1, 11, 17, 24 and 31. It

appears that the current Appendix now incorporates the Amendment filed August 2, 2004, which was not entered. Please see the Advisory Action mailed November 4, 2004. Correction is needed.

An Examiner's Answer was mailed April 20, 2006 "in response to the supplemental appeal brief filed January 09, 2006" [page 1].

Section § 1207.02 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 3, August 2005) states:

Requirements for Examiner's Answer

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

....

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

It is noted that while the Examiner's Answer states that "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal" [page 4 under the caption "Evidence Relied Upon"], the claim rejections are listed as follows:

1. Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,389,464 issued to Krishnamurthy et al. (hereinafter referred to as Krishnamurthy) in view of USPN 6,913,037

issued to Spofford et al. (hereinafter referred to as Spofford) in further view of USPN 6,662,208 issued to Moeller et al. (hereinafter referred to as Moeller) [page 4].

Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to hold the Supplemental Appeal Brief filed January 9, 2006 defective;
- 2) for notification to appellants to file a Supplemental Appeal Brief which includes an accurate Appendix;
- 3) for consideration of the Supplemental Appeal Brief;
- 4) for submission of a revised Examiner's Answer which corrects the "Evidence Relied Upon" section; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:


DALE M. SHAW

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